

AMENDED IN SENATE APRIL 30, 2008

AMENDED IN SENATE MARCH 27, 2008

SENATE BILL

No. 1425

Introduced by Senators Steinberg and Simitian
(Coauthor: Senator Torlakson)
(Coauthor: Assembly Member Arambula)

February 21, 2008

An act to amend Section 1798.24 of the Civil Code, and to add Section 49079.5 to the Education Code, relating to pupil data.

LEGISLATIVE COUNSEL'S DIGEST

SB 1425, as amended, Steinberg. Pupil data.

~~Federal~~

(1) *Federal* law requires schools and educational agencies receiving federal financial assistance to comply with specified provisions regarding the release of pupil data. State law prescribes additional rules relating to the authorized release of pupil data.

Under existing law, the State Department of Education is required to contract for the development of proposals to provide for the retention and analysis of longitudinal pupil achievement data on the tests administered pursuant to Standardized Testing and Reporting Program (STAR), the English language development tests, and the high school exit exam. Existing law provides that this longitudinal achievement data is known as the California Longitudinal Pupil Achievement Data System (CALPADS). Under existing law, CALPADS is required to be used to accomplish specified goals, including providing school districts and the department access to the data necessary to comply with federal reporting requirements, as specified, providing a better means of evaluating educational progress and investments over time, providing

local educational agencies information that can be used to improve pupil achievement, and providing an efficient, flexible, and secure means of maintaining longitudinal statewide pupil data.

This bill would require the department, or *any other* entity that administers CALPADS, to the extent permissible under *the* federal law *Family Educational Rights and Privacy Act (FERPA)*, to conduct pupil data management on behalf of local educational agencies. The bill would state the intent of the Legislature to accomplish specified objectives related to these provisions, including, but not limited to, complying with ~~all state and~~ *FERPA*, federal privacy regulations, *and the California Constitution* in order to protect pupil rights and privacy. The bill would authorize local educational agencies to access specified data via CALPADS, and, to the extent permissible under state and federal law, to share specified data via CALPADS. The bill would require the department to establish an ~~independent~~ *institutional* review board to review and respond to all requests for aggregate and individually identifiable data, and, to the extent possible, to redirect department personnel for the ~~independent~~ *institutional* review board rather than establishing new positions. The department would be required to ~~prepare~~ *adopt* regulations to ~~fully implement for the independent institutional~~ review board, as specified. ~~The bill would require the Committee for the Protection of Human Subjects for the California Health and Human Services Agency to enter into a written agreement with the independent review board to enable the board to provide certain data security approvals for the release of data to researchers, as specified.~~

(2) *Existing law prohibits a state agency from disclosing any personal information in a manner that would link the information disclosed to the individual to whom it pertains. Existing law provides exceptions to this prohibition, including authorizing a state agency to release personally identifiable data to a nonprofit educational institution conducting scientific research, provided the request for information is approved by the Committee for the Protection of Human Subjects (CPHS) for the California Health and Human Services Agency. Existing law authorizes the CPHS to enter into written agreements to enable other institutional review boards to provide the required data security approvals.*

This bill would require the CPHS to enter into a written agreement with the institutional review board to provide the required data security approvals for the release of data to researchers, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1798.24 of the Civil Code is amended
2 to read:
3 1798.24. No agency may disclose any personal information in
4 a manner that would link the information disclosed to the individual
5 to whom it pertains unless the information is disclosed, as follows:
6 (a) To the individual to whom the information pertains.
7 (b) With the prior written voluntary consent of the individual
8 to whom the record pertains, but only if that consent has been
9 obtained not more than 30 days before the disclosure, or in the
10 time limit agreed to by the individual in the written consent.
11 (c) To the duly appointed guardian or conservator of the
12 individual or a person representing the individual if it can be proven
13 with reasonable certainty through the possession of agency forms,
14 documents or correspondence that this person is the authorized
15 representative of the individual to whom the information pertains.
16 (d) To those officers, employees, attorneys, agents, or volunteers
17 of the agency that has custody of the information if the disclosure
18 is relevant and necessary in the ordinary course of the performance
19 of their official duties and is related to the purpose for which the
20 information was acquired.
21 (e) To a person, or to another agency where the transfer is
22 necessary for the transferee agency to perform its constitutional
23 or statutory duties, and the use is compatible with a purpose for
24 which the information was collected and the use or transfer is
25 accounted for in accordance with Section 1798.25. With respect
26 to information transferred from a law enforcement or regulatory
27 agency, or information transferred to another law enforcement or
28 regulatory agency, a use is compatible if the use of the information
29 requested is needed in an investigation of unlawful activity under
30 the jurisdiction of the requesting agency or for licensing,
31 certification, or regulatory purposes by that agency.
32 (f) To a governmental entity when required by state or federal
33 law.

1 (g) Pursuant to the California Public Records Act (Chapter 3.5
2 (commencing with Section 6250) of Division 7 of Title 1 of the
3 Government Code).

4 (h) To a person who has provided the agency with advance,
5 adequate written assurance that the information will be used solely
6 for statistical research or reporting purposes, but only if the
7 information to be disclosed is in a form that will not identify any
8 individual.

9 (i) Pursuant to a determination by the agency that maintains
10 information that compelling circumstances exist that affect the
11 health or safety of an individual, if upon the disclosure notification
12 is transmitted to the individual to whom the information pertains
13 at his or her last known address. Disclosure shall not be made if
14 it is in conflict with other state or federal laws.

15 (j) To the State Archives as a record that has sufficient historical
16 or other value to warrant its continued preservation by the
17 California state government, or for evaluation by the Director of
18 General Services or his or her designee to determine whether the
19 record has further administrative, legal, or fiscal value.

20 (k) To any person pursuant to a subpoena, court order, or other
21 compulsory legal process if, before the disclosure, the agency
22 reasonably attempts to notify the individual to whom the record
23 pertains, and if the notification is not prohibited by law.

24 (l) To any person pursuant to a search warrant.

25 (m) Pursuant to Article 3 (commencing with Section 1800) of
26 Chapter 1 of Division 2 of the Vehicle Code.

27 (n) For the sole purpose of verifying and paying government
28 health care service claims made pursuant to Division 9
29 (commencing with Section 10000) of the Welfare and Institutions
30 Code.

31 (o) To a law enforcement or regulatory agency when required
32 for an investigation of unlawful activity or for licensing,
33 certification, or regulatory purposes, unless the disclosure is
34 otherwise prohibited by law.

35 (p) To another person or governmental organization to the extent
36 necessary to obtain information from the person or governmental
37 organization as necessary for an investigation by the agency of a
38 failure to comply with a specific state law that the agency is
39 responsible for enforcing.

1 (q) To an adopted person and is limited to general background
2 information pertaining to the adopted person's natural parents,
3 provided that the information does not include or reveal the identity
4 of the natural parents.

5 (r) To a child or a grandchild of an adopted person and
6 disclosure is limited to medically necessary information pertaining
7 to the adopted person's natural parents. However, the information,
8 or the process for obtaining the information, shall not include or
9 reveal the identity of the natural parents. The State Department of
10 Social Services shall adopt regulations governing the release of
11 information pursuant to this subdivision by July 1, 1985. The
12 regulations shall require licensed adoption agencies to provide the
13 same services provided by the department as established by this
14 subdivision.

15 (s) To a committee of the Legislature or to a Member of the
16 Legislature, or his or her staff when authorized in writing by the
17 member, where the member has permission to obtain the
18 information from the individual to whom it pertains or where the
19 member provides reasonable assurance that he or she is acting on
20 behalf of the individual.

21 (t) (1) To the University of California or a nonprofit educational
22 institution conducting scientific research, provided the request for
23 information is approved by the Committee for the Protection of
24 Human Subjects (CPHS) for the California Health and Human
25 Services Agency (CHHSA) or ~~a~~ *an institutional* review board, as
26 authorized in paragraphs (4) and (5). The approval required under
27 this subdivision shall include a review and determination that all
28 the following criteria have been satisfied:

29 (A) The researcher has provided a plan sufficient to protect
30 personal information from improper use and disclosures, including
31 sufficient administrative, physical, and technical safeguards to
32 protect personal information from reasonable anticipated threats
33 to the security or confidentiality of the information.

34 (B) The researcher has provided a sufficient plan to destroy or
35 return all personal information as soon as it is no longer needed
36 for the research project, unless the researcher has demonstrated
37 an ongoing need for the personal information for the research
38 project and has provided a long-term plan sufficient to protect the
39 confidentiality of that information.

1 (C) The researcher has provided sufficient written assurances
2 that the personal information will not be reused or disclosed to
3 any other person or entity, or used in any manner, not approved
4 in the research protocol, except as required by law or for authorized
5 oversight of the research project.

6 (2) The CPHS or *institutional* review board shall, at a minimum,
7 accomplish all of the following as part of its review and approval
8 of the research project for the purpose of protecting personal
9 information held in agency databases:

10 (A) Determine whether the requested personal information is
11 needed to conduct the research.

12 (B) Permit access to personal information only if it is needed
13 for the research project.

14 (C) Permit access only to the minimum necessary personal
15 information needed for the research project.

16 (D) Require the assignment of unique subject codes that are not
17 derived from personal information in lieu of social security
18 numbers if the research can still be conducted without social
19 security numbers.

20 (E) If feasible, and if cost, time, and technical expertise permit,
21 require the agency to conduct a portion of the data processing for
22 the researcher to minimize the release of personal information.

23 (3) Reasonable costs to the agency associated with the agency's
24 process of protecting personal information under the conditions
25 of CPHS approval may be billed to the researcher, including, but
26 not limited to, the agency's costs for conducting a portion of the
27 data processing for the researcher, removing personal information,
28 encrypting or otherwise securing personal information, or assigning
29 subject codes.

30 (4) The CPHS may enter into written agreements to enable other
31 institutional review boards to provide the data security approvals
32 required by this subdivision, provided the data security
33 requirements set forth in this subdivision are satisfied.

34 (5) Notwithstanding paragraph (4), the CPHS shall enter into a
35 written agreement with the ~~independent~~ *institutional* review board
36 established ~~in pursuant to~~ Section 49079.5 of the Education Code.
37 The agreement shall authorize that board to provide the data
38 security approvals required by this subdivision, provided the data
39 security requirements set forth in this subdivision and the act

1 specified in paragraph (1) of subdivision (a) of Section 49079.5
2 of the Education Code are satisfied.

3 (u) To an insurer if authorized by Chapter 5 (commencing with
4 Section 10900) of Division 4 of the Vehicle Code.

5 (v) Pursuant to Section 1909, 8009, or 18396 of the Financial
6 Code.

7 This article shall not be construed to require the disclosure of
8 personal information to the individual to whom the information
9 pertains when that information may otherwise be withheld as set
10 forth in Section 1798.40.

11 SEC. 2. Section 49079.5 is added to the Education Code, to
12 read:

13 49079.5. (a) The Legislature recognizes that a longitudinal
14 pupil data system could provide direct and tangible benefits to
15 pupils, educators, policymakers, and the public. It is the intent of
16 the Legislature, in enacting this section, to accomplish the
17 following:

18 (1) Comply with the federal Family Educational Rights and
19 Privacy Act (20 U.S.C. Sec. 1232g) and related regulations
20 (hereafter—"FERPA") and the California Constitution in order
21 to protect pupil rights and privacy.

22 (2) Create an environment in which the department ~~or, or any~~
23 *other* entity that administers the California Longitudinal Pupil
24 Achievement Data System (CALPADS), and CALPADS, become
25 resources rather than burdens for local educational agencies.

26 (3) Promote a culture of continuous improvement through
27 collaboration and informed decisionmaking at the classroom,
28 school, district, state, and policymaker level.

29 (4) Minimize the anticipated workload increase on the
30 department ~~or, or any other~~ entity that administers CALPADS,
31 that would be generated by an increased number of data requests
32 as CALPADS becomes operational, by establishing clear guidance
33 on data access and an efficient process for responding to requests
34 for access.

35 (5) Make pupil data available to researchers from nonprofit
36 organizations while appropriately protecting the privacy of
37 individual pupils.

38 (b) To the extent permissible under ~~the act, the department or~~
39 *FERPA, the department, or any other* entity that administers
40 CALPADS, shall act on behalf of local educational agencies under

1 ~~the act~~ *FERPA*, including providing access to and protecting the
2 security of pupil data.

3 (c) To the extent permissible under ~~the act, the department or~~
4 *FERPA, the department, or any other* entity that administers
5 CALPADS ~~may~~, on behalf of local educational agencies, *may*
6 release data to researchers from nonprofit organizations.

7 (d) The department or *any other* entity that administers
8 CALPADS shall establish an ~~independent~~ *institutional* review
9 board to review and respond to all requests for aggregate and
10 individually identifiable data, and shall redirect department
11 personnel for the ~~independent~~ *institutional* review board rather
12 than establishing new positions.

13 (1) Pursuant to subdivision (t) of Section 1798.24 of the Civil
14 Code, the ~~independent~~ *institutional* review board shall enter into
15 a signed agreement with the Committee for the Protection of
16 Human Subjects for the California Health and Human Services
17 Agency to enable the ~~independent~~ *institutional* review board to
18 provide the data security approvals required by that section. The
19 agreement shall authorize the *institutional review* board to release
20 individually identifiable data to qualified researchers and other
21 state and local agencies, as permitted under state law and ~~the act~~
22 *FERPA*.

23 (2) The department shall commence preparations for the creation
24 of the ~~independent~~ *institutional* review board at least one month
25 before the CALPADS pilot program is scheduled to begin.

26 (3) No later than one month before the CALPADS pilot program
27 is scheduled to end, the department shall adopt regulations for the
28 ~~independent~~ *institutional* review board that shall include, but ~~shall~~
29 not be limited to, all of the following:

30 (A) Processes for:

31 (i) Application for access to data.

32 (ii) Response to applications for access to data, including
33 timelines.

34 (iii) Appeal of denials for access to data.

35 (B) Criteria to be used for approving the release of data,
36 including, but not limited to:

37 (i) The release of data to researchers from nonprofit
38 organizations that are conducting research for the purpose of
39 improving instruction to pupils.

1 (ii) Limitations on data released, including, but not limited to,
2 releasing to researchers only data necessary to meet research
3 objectives.

4 (iii) Requiring an agreement by applicants to comply with
5 privacy and disclosure laws and regulations, and existing law
6 regarding data control and security.

7 (C) Any reasonable fees or charges that may be imposed upon
8 applicants to cover costs of responding to time-intensive requests.

9 (D) Rules for data recipients regarding data control and
10 destruction of data after use, to guard against any misuse of data,
11 including third-party transfer.

12 (e) Local educational agencies may access data via CALPADS
13 concerning pupils enrolled in their school or transferring to their
14 school from another school.

15 (f) In order to promote a culture of collaboration and data
16 analysis and to increase the identification and sharing of effective
17 practices, local educational agencies may share data with each
18 other via CALPADS to the extent permissible under state law and
19 the act *FERPA*.

20 ~~(g) If an agency releases data pursuant to this section, and that~~
21 ~~release is in violation of either the act or subdivision (t) of Section~~
22 ~~1798.24 of the Civil Code, that agency is responsible for the~~
23 ~~violation. This subdivision does not limit the liability of a~~
24 ~~researcher who obtains data pursuant to this section and who~~
25 ~~releases that data in violation of either the act or subdivision (t) of~~
26 ~~Section 1798.24 of the Civil Code.~~

27 *(g) If the department releases data pursuant to this section, and*
28 *that release is in violation of either FERPA or subdivision (t) of*
29 *Section 1798.24 of the Civil Code, the department is responsible*
30 *for the violation. If a local educational agency releases data*
31 *pursuant to this section and that release is in violation of FERPA,*
32 *the local educational agency is responsible for the violation. This*
33 *subdivision does not limit the liability of a researcher who obtains*
34 *data pursuant to this section and who releases that data in violation*
35 *of either FERPA or subdivision (t) of Section 1798.24 of the Civil*
36 *Code.*

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